

and the disguised microphone appearing as a wristwatch, cufflink, or cigarette pack; etc. The restrictions do not apply to devices such as the parabolic microphone or other directional microphones ordinarily used by broadcasters at sports events, since these devices are not primarily useful for surreptitious listening.

(b) *Licensing policy.* (1) License applications will generally be approved for:

(i) A provider of wire or electronic communication services or an officer, agent, or employee of, or person under contract with, such a provider in the normal course of the business of providing that wire or electronic communication service; and

(ii) Officers, agents, or employees of, or person under contract with the United States, one of the 50 States, or a political subdivision thereof, when engaged in the normal course of government activities.

(2) Other applications will generally be denied.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications involving exports and reexports of communications interception devices.

(d) *U.S. controls.* Controls on this equipment are maintained by the United States government in accordance with the Omnibus Crime Control and Safe Streets Act of 1968.

§ 742.14 Significant items: hot section technology for the development, production or overhaul of commercial aircraft engines, components, and systems.

(a) *License requirement.* Licenses are required for all destinations, except Canada, for ECCNs having an “SI” under the “Reason for Control” paragraph. These items include hot section technology for the development, production or overhaul of commercial aircraft engines controlled under ECCN 9E003.a.1. through a.12., .f, and related controls.

(b) *Licensing policy.* Pursuant to section 6 of the Export Administration Act of 1979, as amended, foreign policy controls apply to technology required for the development, production or overhaul of commercial aircraft engines controlled by ECCN 9E003.a.1. through a.12, .f, and related controls.

These controls supplement the national security controls that apply to these items. Applications for export and reexport to all destinations will be reviewed on a case-by-case basis to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. The following factors are among those that will be considered to determine what action will be taken on license applications:

- (1) The country of destination;
- (2) The ultimate end-user(s);
- (3) The technology involved;
- (4) The specific nature of the end-use(s); and
- (5) The types of assurance against unauthorized use or diversion that are given in a particular case.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this § 742.14.

(d) [Reserved]

[64 FR 13339, Mar. 18, 1999]

§ 742.15 Encryption items.

Encryption items can be used to maintain the secrecy of information, and thereby may be used by persons abroad to harm national security, foreign policy and law enforcement interests. The U.S. has a critical interest in ensuring that important and sensitive information of the public and private sector is protected. Consistent with our international obligations as a member of the Wassenaar Arrangement, the U.S. has a responsibility to maintain control over the export of encryption items. As the President indicated in Executive Order 13026 and in his Memorandum of November 15, 1996, export of encryption software, like export of encryption hardware, is controlled because of this functional capacity to encrypt information on a computer system, and not because of any informational or theoretical value that such software may reflect, contain, or represent, or that its export may convey to others abroad. For this reason, export controls on encryption software are distinguished from controls on other software regulated under the EAR.

(a) *License requirements.* Licenses are required for exports and reexports of

encryption items (EI) classified under ECCNS 5A002, 5D002 and 5E002 to all destinations except Canada. Refer to part 740 of this EAR for licensing exceptions and to part 772 of the EAR for the definition of "encryption items."

(b) *Licensing policy.* The following licensing policies apply to items identified in paragraph (a) of this section. Except as otherwise noted, applications will be reviewed on a case-by-case basis by BXA, in conjunction with other agencies, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. For subsequent bundling and updates of these items see paragraph (n) of § 770.2 of the EAR. No exports without a license are authorized to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria.

(1) *Encryption items under ECCNs 5A992, 5D992 and 5E992.* Certain encryption commodities, software and technology may be classified under ECCNs 5A992, 5D992 or 5E992. These items continue to be subject to AT1 controls. Such items include encryption commodities, software and technology with key lengths up to and including 56-bits with an asymmetric key exchange algorithm not exceeding 512 bits; products which only provide key management with asymmetric key exchange algorithms not exceeding 512 bits; and mass market encryption commodities and software with key lengths not exceeding 64-bits for the symmetric algorithm. Refer to the Cryptography Note (Note 3) to part II of Category 5 of the CCL for a definition of mass market encryption commodities and software. Key exchange mechanisms, proprietary key exchange mechanisms, or company proprietary commodities and software implementations may also be eligible for this treatment. Exporters may self-classify such 5A992, 5D992 or 5E992 items and export them without review and classification by BXA provided you have submitted to BXA and the ENC Encryption Request Coordinator by the time of export the information described in paragraphs (a) through (e) of Supplement 6 to this part 742. Notification should be made by e-mail to crypt@bxa.doc.gov.

(2) *Encryption items under ECCNs 5A002, 5D002 and 5E002.* All encryption

commodities, software and components classified by BXA under ECCNs 5A002, 5D002 and 5E002 except cryptanalytic items are authorized for export and re-export to any end-user in the countries listed in Supplement 3 to Part 740 of the EAR. Items classified by BXA as retail products under ECCNs 5A002 and 5D002 are authorized for export and re-export to any end-user. All 5A002, 5D002 and 5E002 encryption items are authorized for export or reexport to any individual, commercial firm or other non-government end-user in countries not listed in Supplement 3 to Part 740 of the EAR. No exports of such items are authorized without a license to Cuba, Iran, Iraq, North Korea, Libya, Sudan or Syria. Any encryption item (including technology classified under ECCN 5E002) is authorized for export or reexport to U.S. subsidiaries (as defined in part 772).

(3) *Encryption licensing.* Exporters may submit applications for licenses or Encryption Licensing Arrangements for exports and reexports of encryption items not eligible for license exception, including exports and reexports of encryption technology to strategic partners of U.S. companies (as defined in part 772). For Encryption Licensing Arrangements, the applicant must specify the sales territory and class of end-user. Encryption Licensing Arrangements granted for exports of unlimited quantities for all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria, are valid for four years, and may require reporting. Licenses are required for exports of encryption items to governments, or Internet and telecommunications service providers for the provision of services specific to governments, and may be favorably considered for civil uses, e.g., social or financial services to the public; civil justice; social insurance, pensions and retirement; taxes and communications between governments and their citizens.

[65 FR 2499, Jan. 14, 2000, as amended at 65 FR 62608, Oct. 19, 2000]

§ 742.16 India and Pakistan Sanctions.

In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13th with regard to India and